IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ENTERED
MAY - 4 2005
U.S. BANKRUPTCY COURT
MDNC - TD

IN RE:	)	
	)	
BOSTIC CONSTRUCTION, INC.	)	CASE NO. 05-11199
	)	
Debtor.	)	

MEMORANDUM OPINION

Wolfpen Associates, Inc. ("Wolfpen") filed a motion for relief from the automatic stay and requested an expedited hearing on the motion so that it could commence a civil action against Bostic Development at Asheville, LLC ("Bostic Asheville"), a non-debtor party, to enforce its claim of lien. Because the Court finds that the automatic stay is not applicable to Bostic Asheville – in the context of the Debtor's Chapter 7 bankruptcy – the Court will deny Wolfpen's motion.

According to Wolfpen, it contracted with Bostic Construction, Inc. (the "Debtor"), on October 7, 2004, to repair a retention pond on property owned by Bostic Asheville. Wolfpen completed its work on November 5, 2004, and is purportedly owed the principal amount of $16,803.50. On December 7, 2004, it filed a notice of lien against the real property. Wolfpen now asserts that the 180-day period under North Carolina law for commencing a suit against the real property owner, which is necessary to preserve its lien rights, is about to expire. Wolfpen filed its motion late in the afternoon on May 3, 2005, and the 180-day period expires on May, 4, 2005.

By its terms, the automatic stay protects a debtor and the estate – not non-debtor parties. 11 U.S.C. § 362(a). Accordingly, the automatic stay generally may not be invoked by entities such as sureties, guarantors, co-obligors, or others with a similar legal or factual nexus to the debtor. McCartney v. Integra Nat'l Bank North, 106 F.3d 506, 509-10 (3rd Cir. 1997). See, e.g., United States v. Dos Cabezas Corp., 995 F.2d 1486, 1491-93 (9th Cir. 1993) (holding that the automatic stay did not prevent the government from pursuing deficiency judgment against a non-debtor cosignor of a promissory note). Some courts have carved out limited exceptions to this general rule in cases where there is such an identity of interest between the debtor and the non-debtor party that the debtor may be said to be the real defendant, or where extending the automatic stay to a non-debtor party will

facilitate reorganization efforts. See A.H. Robins Co. v. Piccinin, 788 F.2d 994, 999 (4th Cir.)(staying asbestos actions related to the debtor's bankruptcy), cert. denied, 479 U.S. 876 (1986). In this matter, however, the Debtor is proceeding under Chapter 7 of the Bankruptcy Code and no special circumstances have been presented to the Court demonstrating that the automatic stay applies to a non-debtor party.

Therefore, the Court will deny Wolfpen's motion for relief from the automatic stay and request for an expedited hearing. The automatic stay does not protect Bostic Asheville and therefore no relief is necessary. This memorandum opinion constitutes the Courts' findings of fact and conclusions of law. A separate order will be entered pursuant to Fed. R. Bankr. P. 9021.

Entered this 4th day of May 2005.

THOMAS W. WALDREP, JR.
United States Bankruptcy Judge

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